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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)
)
Rate Regulation)

MM Docket No. 92-266

REPLY COMMENTS OF THE CONSUMER ELECTRONICS GROUP
OF THE ELECTRONIC INDUSTRIES ASSOCIATION

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby replies to the comments submitted in response to the above-captioned Notice of Proposed Rulemaking ("Notice"). As in our earlier comments, we limit our discussion to issues relating to equipment and wiring located at the premises of subscribers to cable services.

The massive volume of the first-round comments and the short interval between those comments and the second-round due date make it difficult for any party to participate effectively in the reply phase. Even in the first round of comments, a greatly disproportionate number of the pleadings were submitted by cable companies, multiple system operators, or related organizations.¹ That imbalance

¹/ Curiously, there are several lengthy pleadings which appear almost identical, but which were filed under different names. Compare, e.g., Nashoba Communications at 61-83 with Time
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is likely to be greater still in the reply comments. These circumstances, coupled with the tight deadline for final action imposed by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),² may complicate the Commission's effort to develop regulations responsive to consumers' needs and legislative intent. Nonetheless, developing such regulations should be the Commission's objective. It must not be subordinated to the self-interested appeals of the parties whose conduct the Congress sought to bring under control.

EIA/CEG continues to believe the Commission should structure its efforts with fidelity to explicit statutory instructions and with constant awareness of the overarching legislative goals of protecting consumers against abuses of market power and increasing competitive opportunities for service and equipment suppliers. Unfortunately, many of the comments submitted to the Commission seem to be directed toward different objectives.

We are puzzled, for example, by the resistance of the National Cable Television Association ("NCTA") to the

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Warner at 47-65 and Adelphia Communications et al. at 62-84 and Newhouse Broadcasting at 16-30 and Falcon Cable Group at 35-48. Obviously, multiple word-for-word recitations of the same arguments cannot increase their persuasiveness.

^{2/} Pub.L. No. 102-385, 106 Stat. 1460 (1992)("Cable Act"). The Commission must complete its rate regulation rulemaking by April 3, 1993.

Commission's discussion of the role of unbundling equipment from basic service rates in promoting a competitive market for equipment and installation services. NCTA at 46. NCTA claims "this is an improbable legislative intent, for which there is no evidence." Id. To the contrary, there is not just "evidence," but a specific legislative directive, that the Commission "promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes."³ Unless charges for equipment are unbundled from the charges for cable services, it is difficult to imagine how such competition can be expected to develop.⁴

If there is an argument for which there is "no evidence" of legislative intent, it is NCTA's assertion that the Commission should not concern itself with the prices charged for specific devices (converter boxes, remote controls, and the like) but only with the "overall price of all equipment." NCTA at 45-46 (emphasis in original). NCTA maintains that cable operators should be free to engage in

^{3/} Cable Act, Section 17 (§ 624A(c)(2)(C) of the Communications Act) (emphasis added).

^{4/} As for which equipment should be subject to the unbundling requirement, we agree with regulators and consumer advocates that a broad view should be taken. See Consumer Federation of America at 130-132; National Association of Telecommunications Officers and Advisors at 46-47.

"below-cost pricing of individual items of equipment and installation" and that "even above-cost pricing of individual items should not cause problems so long as, overall, the cable operators's charges . . . are not . . . a source of monopoly profits." NCTA at 52. This cannot be what the Congress had in mind when it called for equipment prices to be regulated on the basis of "actual cost."⁵ Allowing parties with "undue market power"⁶ to engage in such cross-subsidies will neither protect consumers nor promote the competitive supply of equipment.⁷

EIA/CEG also respectfully disagrees with NCTA's assertion that, for "descrambling devices and for installations of additional outlets and equipment, competitive availability may never be a reasonable option for consumers for security reasons." NCTA at 46 (emphasis added). NCTA seems to believe that competition can

⁵/ Cable Act, Section 3 (§ 623(b)(3) of the Communications Act).

⁶/ Cable Act, Section 2(b)(5)).

⁷/ Non-cable parties have expressed cautious support for allowing discounted "promotional" rates for installation of cable home wiring for new customers. E.g., Consumer Federation of America at 132-135. The Commission should be careful not to grant cable companies excessive flexibility in this area because of the ways in which cross-subsidies could undermine competition in home wiring services. One possible solution might be to require cable operators to provide rebates -- equal to the amount of the discount offered to new subscribers whose wiring is installed by the cable company -- to those new customers who secure their wiring from independent contractors or whose premises are already wired.

legitimately be foreclosed to whatever "extent that provision of particular equipment is itself the method for enabling subscribers to receive the services they pay for -- and for ensuring that they not receive the services they have not purchased" NCTA at 46-47. This argument flouts the statutory requirement of "commercial availability" of customer-premises cable boxes. It also presupposes the unavailability of alternative means of preventing theft of service. EIA/CEG does not deny the right of cable operators to be protected against signal piracy, but we cannot acquiesce in the cable industry's assertion of a unilateral right to combat piracy in ways that restrict equipment competition or hinder the use of functions in consumer electronics products,⁸ in contravention of explicit legislative provisions. This is especially so when alternative security measures are available that do not have such adverse effects.⁹

⁸/ The compatibility issue, of course, is now the subject of a separate Notice of Inquiry (ET Docket No. 93-7), as well as ongoing discussions between the cable and consumer electronics industries. Still, we think the rules developed in this proceeding must be formulated with a view to other provisions of the statute and not exacerbate the problems Congress intended Section 17 to address.

⁹/ We are optimistic that careful review of compatibility and piracy issues will result in the development of measures that eliminate the need for any special decoding, descrambling, frequency converting, or similar equipment at the premises of cable service customers (other than functionalities that would be incorporated in competitively supplied consumer electronics products). Even if today's technology does not
(Footnote 9 continued on next page)

Circumstances do not permit a comprehensive response to all the objectionable elements of the first-round pleadings filed by other parties. Still, a few comments must be answered. One party suggests that the Commission should regulate customer-premises equipment provided by the cable company only if it is "technologically unique" and "not readily available in the local retail consumer electronics market." Encore Media Corporation at 15. The statutory provision on regulation of rates for equipment and for additional installations establishes no such limitation on the Commission's regulatory responsibility. The same flaw is apparent in suggestions that the Commission provide for "total deregulat[ion]" of the rates for equipment, installation, and additional outlets, based on a finding of "effective competition."¹⁰ See Falcon Cable Group at 40.

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offer the perfect solution to issues of compatibility, piracy prevention, etc., it is important to consider what can be achieved with a relatively brief period of sustained effort (as has been demonstrated already by the enormous progress in advanced television over the past several years).

^{10/} Falcon admits that the Cable Act's definition of "effective competition" applies to cable television service, not to equipment, installation, and additional outlets, but claims this does not prevent the Commission from deregulating rates for the latter if it wishes. Falcon Cable Group at 40. The recent Court of Appeals decision on the Commission's "forbearance" policy appears to call that argument into question. See Amer. Tel. & Tel. Co. v. F.C.C., 978 F.2d 727, 735-737 (D.C. Cir. 1992). In any event, the time to explore the outer limits of the Commission's authority to deregulate (Footnote 10 continued on next page)

EIA/CEG is at a loss to understand the suggestion that installation charges should be measured against a "reasonableness standard whereby the rate would be deemed reasonable if no greater than, for example, the hourly installation rate charged by the local exchange telephone carrier ('telco') that provides services in the area." Falcon Cable Group at 44. The statute specifies that equipment and installation rates are to be set on the basis of the cable service provider's "actual cost," not reasonableness (the latter is the standard for basic cable service). Moreover, there is no reason why the charges imposed by another monopoly should be considered at all relevant to an effort to determine what rates would be charged in a competitive environment.¹¹

Various other assertions are foreclosed by the provisions of the statute the Commission is implementing. In particular, we see no basis for claims that unbundling rates for equipment from rates for basic service should not be required because it will burden operators (St. Thomas-St.

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equipment and wiring provided by cable companies is after the Commission has taken all steps necessary to ensure that market power in the delivery of video programming is no longer a factor in the provision of customer-premises products and services.

^{11/} It is elemental that the primary objective of rate regulation is to establish prices that market forces would set, but for market imperfections such as are caused by exclusive local franchises.

John Cable TV at 10-11), that the Commission should exempt from regulation any equipment that is available commercially (Time Warner Entertainment Company at 57), or that the Commission should simply decline to regulate rates for remote controls because of their commercial availability (Cablevision Systems Corporation at 14).¹² The Commission does not have the latitude to consider these arguments, which are, in any event, contrary to the pro-competitive and pro-consumer goals of the statute.

It is unfortunate that the abbreviated deadline for action on the cable home wiring issue prevented the Commission from developing a comprehensive scheme to promote competition in cable home wiring.¹³ As the Commission's order recognizes, adoption of rules for cable home wiring based on the approach already used for telephone companies was endorsed by a remarkably broad array of parties -- including consumer groups, telephone companies, consumer electronics manufacturers, alternative video delivery media, and others.¹⁴ Fortunately, the Commission has now

^{12/} A related argument, that converters and remotes are "really two parts of one functional unit" (Time Warner at 59), is impossible to reconcile with § 624A(c)(2)(E) of the Communications Act, as revised by Section 17 of the Cable Act.

^{13/} Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, ¶ 6 (released Feb. 2, 1993).

^{14/} Id. at n.11.

established a form of "network demarcation," located on the outside of the consumer's home or apartment, within twelve inches of the point where the wiring enters the premises, that can be used in subsequent rulemakings under the Cable Act.¹⁵ As policies and rules are developed in this and other Cable Act proceedings, this demarcation can serve as a reminder of the goal that products and services at the customer's premises should be subject to maximum competition -- and therefore as much insulation as possible from the consequences of market power.

In short, EIA/CEG believes that the Commission's rate regulation rules for equipment and home wiring should be designed to: (1) comply precisely with the applicable statutory provisions of Section 3; (2) take account of the related provisions under Section 17; and (3) promote

¹⁵/ Id. at ¶ 11-12.

competition and protect consumers against abuses of market power. Proposals which deviate from these criteria should not be adopted.

Respectfully submitted,

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